

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11

PALMETTO GEORGE OPERATING, LLC
d/b/a PRINCE GEORGE HEALTHCARE
CENTER

Employer¹

and

Case 10-RC-144239

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS UNION

Petitioner²

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

The Employer, Palmetto George Operating, LLC d/b/a Prince George Healthcare Center, is a Delaware corporation engaged in operating a nursing home in Georgetown, South Carolina that provides inpatient and outpatient medical care. The Petitioner, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union, filed this petition under Section 9(c) of the National Labor Relations Act.³ The Petitioner seeks to represent a unit of all full-time and regular part-time registered nurses (“RNs”) and licensed practical nurses (“LPNs”) (collectively referred to as “charge nurses” or “floor nurses”) employed at the Employer’s facility in Georgetown, South Carolina, excluding all other

¹ The Employer’s name appears as amended at hearing.

² The Petitioner’s name appears as amended at hearing.

³ The parties stipulated that the Petitioner claims to represent the employees in the proposed unit, and the Employer declines to recognize the Petitioner. The parties also stipulated that there is no contract bar.

employees, Housekeepers, Laundry Employees, Certified Nursing Assistants (“CNAs”), Restorative Nursing Assistants, Schedulers, Unit Secretaries, Maintenance Employees, Dietary Workers, Medical Records Employees, Social Services Employees, Activities Employees, Central Supply Employees, Drivers, Licensed Therapists, Therapist Assistants, Rehab Technicians, Business Office Employees including Accounts Payable Employees and Accounts Receivable Employees, the Director of Nursing, the Assistant Director of Nursing, Unit Managers, MDS Coordinators, office clerical employees, and guards and supervisors as defined in the Act. A hearing officer of the Board held a hearing on the issues raised by the petition during which all parties were given an opportunity to present evidence. The Employer filed a post-hearing brief, which I have duly considered.

The sole issue is whether the charge nurses are supervisors within the meaning of Section 2(11) of the Act, thus making the petitioned-for unit inappropriate. The Employer contends that the charge nurses are supervisors within the meaning of the Act because they discipline and responsibly direct the CNAs.⁴ The Petitioner contends that the charge nurses are statutory employees and do not exercise any authority indicative of supervisory status.

I have considered the evidence and the arguments presented by the parties on the issue. As discussed below, I have concluded that the charge nurses are not supervisors within the

⁴ At hearing, the parties stipulated that the charge nurses do not hire, transfer, lay off, recall, promote, reward or adjust grievances within the meaning of Section 2(11) of the Act. Further, there is no record evidence regarding the charge nurses’ authority to assign, discharge or suspend CNAs within the meaning of the Act. The Employer asserts that it is solely relying on the charge nurses’ authority to otherwise discipline and responsibly direct the CNAs to establish their supervisory authority.

meaning of Section 2(11) of the Act, and, accordingly, I shall direct an election in the petitioned-for unit.⁵

To provide a context for my discussion of the issue, I will first provide a brief overview of the Employer's operations, including its organizational hierarchy. I will then provide an overview of the charge nurse position. I will then set forth my legal analysis of the issue presented, including a discussion of the Employer's burden to establish that the charge nurses discipline and responsibly direct the CNAs within the meaning of Section 2(11) of the Act and detail how the Employer failed to meet its burden.

THE EMPLOYER'S OPERATIONS

The Employer operates a 148-bed nursing home in Georgetown, South Carolina that provides inpatient and outpatient medical services 24 hours a day, seven days per week. These services include post-hospital and post-surgical care, physical, occupational and speech therapies, pharmacy services, family counseling, and other health care services. The facility is divided into three separate units: the Magnolia unit, the Indigo unit, and the Palmetto unit. At the time of the hearing, the Magnolia unit, which is primarily dedicated to long-term care, had 54 beds in use; the Indigo unit, which is dedicated to rehabilitation but also houses some private pay long-term care residents, had 36 beds in use; and the Palmetto unit, which is also primarily dedicated to long-term care, had 50 beds in use.

The top management official onsite is the Administrator who provides oversight for the entire facility, including the business office, admissions, dietary, housekeeping, maintenance,

⁵ The parties stipulated that the RNs are professional employees within the meaning of Section 2(12) of the Act and that the LPNs are nonprofessional employees. As Section 9(b)(1) precludes the Board from deciding that any unit is appropriate which contains both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in such unit, I shall direct a *Sonotone* election in accordance with the procedures set forth in *Sonotone Corp.*, 90 NLRB 1236, 1241-1242 (1950).

laundry and nursing department. The remainder of this section will focus on the organizational supervisory hierarchy within the nursing department where the charge nurses are assigned.

The nursing department is directed by a “management team” which consists of the Director of Nursing (“DON”), Assistant Director of Nursing (“ADON”), and three Unit Managers assigned to the respective units.⁶ The DON reports directly to the Administrator and is responsible for, among other things, ensuring that the nursing staff is providing quality patient care; monitoring and evaluating the quality and appropriateness of nursing care; ensuring that employee performance meets or exceeds expectations; ensuring that all required records are maintained; and supervising the nursing staff. Similarly, the ADON, who reports directly to the DON, is responsible for assisting in ensuring the nursing staff is providing quality patient care; scheduling; and performing the duties of the DON in her absence. The ADON directly supervises the three Unit Managers. Unit Managers are responsible for assessing and evaluating the systems which facilitate the delivery of quality resident care; implementing and evaluating all nursing procedures and systems relative to unit programming; participating in quality assurance activities; and directly supervising the charge nurses at issue.

The management team is regularly scheduled to work 8:00 a.m. to 5:00 p.m., Monday through Friday. Although they do not work evenings and weekends, the DON and ADON rotate “on-call” duties on a weekly basis. The DON testified that Unit Managers are only on-call on weekends for the limited purpose of addressing staffing and scheduling issues. Although the Employer limits the Unit Managers’ on-call duties to staffing and scheduling matters, the record testimony demonstrates that Unit Managers have specifically instructed charge nurses to call them after hours if they need assistance.

⁶ The parties stipulated at the hearing that the DON, ADON and Unit Managers are all supervisors within the meaning of Section 2(11) of the Act.

THE CHARGE NURSES

The Employer employs 23 charge nurses – 17 LPNs and 6 RNs. Although, under South Carolina law, LPNs are restricted from signing assessments or administering small doses of IV drug medication, the RNs and LPNs otherwise functionally hold the same position. In this regard, both the RNs and LPNs assess patients, answer patient call lights, administer medications, and perform general patient care duties similar to those performed by CNAs. There are approximately 40 CNAs at the facility.⁷ CNAs provide general overall care for the residents, including assistance with bathing, using the restroom, turning over in their beds, and other routine daily tasks.⁸

The charge nurses are hourly employees and are assigned to 12-hour shifts; either dayshift (7:00 a.m. to 7:00 p.m.) or nightshift (7:00 p.m. to 7:00 a.m.). Shift assignments for both the charge nurses and CNAs are made by the Unit Managers. Unlike CNAs, charge nurses are asked to arrive 30 minutes prior to their assigned shift to get a report on any issues.

During their shift, charge nurses and CNAs are assigned to one of the three units. On each shift, there are generally one or two charge nurses and two to five CNAs assigned to a unit. In addition, CNAs are assigned to specific resident rooms within their unit. The CNAs' unit and room assignments are made by the nursing department management team, not the charge nurses. In regard to other CNA staffing and scheduling matters, it is undisputed that the charge nurses have no authority to schedule the CNAs' lunch and rest breaks, evaluate their performance, assign them overtime, or approve variances in their timekeeping records.

⁷ Of those, two are Restorative Aids/CNAs who report directly to the ADON.

⁸ On December 17, 2013, the Petitioner was certified as the bargaining representative of the Employer's Housekeepers, Laundry Employees, CNAs, Restorative Nursing Assistants, Schedulers, Unit Secretaries, Maintenance Employees and Dietary Workers at this same location.

The Employer considers the charge nurses to be the first line of authority for CNAs. This position is reflected on its organizational chart, during mandatory in-service meetings, as well as in the Employer's handbook policies which specifically refer to the charge nurses as the supervisors of the CNAs. The DON testified that charge nurses discipline and direct the overall work performance of the CNAs. As these authorities are the crux of the issue, I will discuss the record evidence in detail below as I analyze the charge nurses' supervisory status.

LEGAL ANALYSIS

The sole issue before the Region is whether the charge nurses are Section 2(11) supervisors. Below is an in-depth discussion of the relevant case law and its application to the record evidence presented by the parties.

A. The Test for Supervisory Status

The traditional test for determining supervisory status is: (1) whether the individual has the authority to engage in or effectively recommend any one of the 12 criteria listed in Section 2(11) of the Act; (2) whether the exercise of such authority requires the use of independent judgment; and (3) whether the individual holds the authority in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994). In regard to the first prong of the test, secondary indicia may also be used to augment supervisory status, however, "secondary indicia should not be considered in the absence of at least one characteristic of supervisory status enumerated in Section 2(11)." *Pacific Beach Corp.*, 344 NLRB 1160, 1161 (2005). As to the second prong of the test, the Board examines whether the indicative authority, exercised on behalf of management, requires independent judgment and is not routine in nature. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001). The burden of proving supervisory status lies with the party asserting such status. *Oakwood Healthcare, Inc.*, 348

NLRB 686, 687 (2006). Supervisory status must be established by a preponderance of the evidence. *Id.* at 694. A lack of evidence is construed against the party asserting supervisory status. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003).

Here, the Employer asserts that the charge nurses are supervisors within the meaning of Section 2(11) of the Act because they exercise independent judgment when they purportedly discipline and responsibly direct the CNAs on its behalf. The record evidence fails to support the Employer's position.

B. The Authority to Discipline

The Employer failed to meet its burden to establish that the charge nurses possess the authority to discipline CNAs, as there is insufficient evidence to demonstrate that they independently issue meaningful discipline. Specifically, to confer 2(11) status, the exercise of a purported supervisor's disciplinary authority must lead to personnel action, without independent investigation or review of other management personnel. *The Republican Co.*, 361 NLRB No. 15, slip op. at 8 (2014). The Board has held that, "Mere warnings that simply bring the employer's attention to substandard performance without recommendations for future discipline serve a limited *reporting* function, and do not establish that the disputed individual is exercising disciplinary authority." *Id.* at 8 (citing *Williamette Industries*, 336 NLRB 743, 744 (2001)). Thus, authority to issue a mere verbal reprimand is too minor a discipline to constitute supervisory authority. *Id.* at 8. Also see *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999) (authority to issue oral warnings regarding unsatisfactory work performance or behavior without recommending discipline does not establish supervisory status); *Ohio Masonic Home*, 295 NLRB 390, 394-395 (1989) (the Board declined to find supervisory authority to discipline when a charge nurse played a role in the disciplinary system by issuing oral reprimands and

written warnings, but did not recommend a specific disciplinary action, as such role only equates to a reporting function).

The Employer asserts that the charge nurses' independent decision to issue an oral counseling or fill out the disciplinary action form to initiate the disciplinary procedure, establishes supervisory status. Here, the evidence demonstrates that the charge nurses merely initiate the disciplinary process by reporting improper conduct observed on their shifts or, at most, issue oral counselings and, therefore, there is insufficient evidence to establish their 2(11) status. Specifically, the DON testified that charge nurses are expected to orally counsel CNAs and, when necessary, initiate the disciplinary process by completing a disciplinary action record.⁹ The disciplinary action record is a form used by the Employer both to initiate and, subsequently, issue discipline. The form requires that the initiator, whether it be a management team member or charge nurse, to add certain information, including the employee's name, job title, department, the date of the incident and an account of the actions leading to the counseling. This is the information that the charge nurse would complete if he/she were reporting a CNA's improper conduct. Notably, although the record indicates that only management team members or charge nurses use these forms, the Employer admits that any employee, including a CNA, can otherwise bring improper conduct to management's attention.

Once the charge nurse completes the above information, the disciplinary action record is given to a management team member who will often seek witness statements, access the CNA's file to review his/her disciplinary record, and determine what, if any, level of discipline should issue. Unlike the management team, charge nurses do not have access to employee personnel

⁹ These same disciplinary action records are used to initiate charge nurses' discipline. The record is silent regarding whether these forms are used to discipline other personnel, including management team members.

files and there is no evidence that they participate in management's investigation of the incident, other than providing their own account of events. As reflected on the disciplinary action record form and in conjunction with its policies, the Employer maintains a progressive disciplinary system with discipline ranging from an oral counseling to termination, and various levels of written warnings and suspension in between.¹⁰ Ultimately, the management team member completes the form by setting forth the determined level of corrective action, signing the form, and issuing the discipline to the employee.

The record establishes that by partially completing this form, the charge nurses merely report inappropriate behavior or unsatisfactory conduct observed on his/her shift, which is then independently reviewed and assessed by a management team member, who ultimately retains the authority to discipline. There is insufficient evidence to demonstrate that the charge nurses effectively recommend discipline other than reporting improper conduct. The charge nurses, therefore, serve as a conduit for information and have a reportorial duty, as opposed to possessing any independent disciplinary authority. Although the employee handbook states that the charge nurses have the authority to issue written warnings and suspensions without pay, the DON admitted at hearing that this language was inaccurate and confirmed that the management team determines the level of discipline. Notably, almost all of the disciplinary action records in the record have the management team member's signature on the "supervisor's signature" line, not the charge nurse's signature.¹¹ Even if these completed disciplinary action record forms

¹⁰ At the hearing, based on an objection from the Petitioner, the Hearing Officer struck the testimony of the Administrator regarding the Employer's current efforts to revise the disciplinary action record form. The Employer was permitted to make an offer of proof. It is unnecessary to decide whether the Hearing Officer erred in her ruling, as the relevant evidence is the Employer's current procedures and forms, not anticipated changes.

¹¹ Only one discipline form contains the signature of a charge nurse on the "supervisor's signature" line, which appears to be atypical. In any event, the management team member

constitute or otherwise document oral counselings issued by charge nurses to CNAs, such evidence does not establish supervisory status as a mere oral warning or counseling is insufficient to confer supervisory status. *Ohio Masonic Home*, 295 NLRB at 394-395.

In support of its position that charge nurses can discipline, the Employer provided evidence that, at least on one occasion, a charge nurse instructed a CNA to leave after she was observed sleeping on the job. I am not persuaded that this disciplinary action establishes the authority to discipline for three reasons. First, this conduct in any workplace, especially in the patient care setting, is the type of flagrant conduct that typically results in immediate disciplinary action. The Employer deems this conduct to be a “Category III” offense which is the highest level offense and can result in immediate termination. Yet, all the charge nurse can do is send the employee home. Such a minor directive does not demonstrate the use of independent judgment. See, e.g. *First Western Bldg. Services*, 309 NLRB 391, 602 (1992) (citing *Dad’s Foods, Inc.*, 212 NLRB 500, 501 (1974) (authority to discharge based on specific predetermined conduct such as intoxication or fighting is insufficient to establish supervisory status)).

Second, and most telling about this discipline, is that although the CNA was immediately asked to leave by the charge nurse, the charge nurse did not issue a disciplinary suspension. Instead, the charge nurse called the DON, reported the incident, and, as explicitly stated on the disciplinary form, the DON issued a subsequent suspension, pending termination. This lack of disciplinary authority even in situations involving serious offenses was further substantiated by the record testimony of the DON. In this regard, she confirmed that the Employer’s most recent handbook, revised in September 2014, inaccurately provides that, “in cases of serious infractions,

signed the document below the charge nurse’s signature in the available blank space, thus demonstrating that the charge nurse’s signature alone was insufficient to effectuate the discipline.

the LPN supervisors also have the authority to independently issue disciplinary suspensions without pay pending further investigation.” Thus, even for serious egregious offenses, the charge nurses do not have the authority to independently issue disciplinary suspensions, pending investigation, as the Employer seems to imply.

Third, a single incident of a charge nurse directing a CNA to leave, without seeking prior approval of a management team member, does not support a finding of supervisory status. See *The Republican Co.*, 361 NLRB slip op. at 11 (citing *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002)) (sporadic exercise of supervisory authority does not confer supervisory status).

In sum, given all of the record evidence, I find that the Employer has failed to meet its burden to establish that the charge nurses issue discipline within the meaning of Section 2(11) of the Act.

C. Authority to Responsibly Direct

The record shows that charge nurses do not responsibly direct the work of CNAs. In *Oakwood Healthcare Inc.*, 348 NLRB at 691-692, the Board found that, “for direction to be ‘responsible,’ the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” The Board further stated that, “to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” *Id.* at 692.

Here, there is insufficient evidence to demonstrate that the charge nurses exercise independent judgment when they direct the CNAs in their daily duties; are held accountable for the CNAs' performance; or possess the authority to take meaningful corrective action in directing the CNAs. Specifically, the DON testified that the charge nurses are tasked with ensuring that the CNAs comply with OSHA regulations, fire alarm or disaster evacuation procedures, resident elopement procedures and proper protocols for resident hygiene. Charge nurses are further tasked with ensuring that CNAs are not abusing or neglecting patients; working within the scope of their certification; and tracking the daily living activities for each of their assigned residents. During mandatory in-service meetings, charge nurses are often instructed to "take charge" of their assigned CNAs and to know where they are at all times. Likewise, the CNAs are instructed not to leave their unit without informing the charge nurse and are required to submit their resident daily activity books to their charge nurse at the end of their shift.

Charge nurse testimony establishes that although charge nurses are tasked with making sure that CNAs follow the above proper procedures, in doing so they do not exercise independent judgment because the CNAs are familiar with their job duties and perform them in accordance with their job descriptions. The record testimony from the charge nurses demonstrates that, in practice, they spend very little time formally directing the work of CNAs and, instead, assist with patient care or presumably tend to their own specialized duties. This was corroborated by the testimony of a 16-year CNA who said she knew what her job duties entailed and did not rely on directives from her charge nurse to complete her tasks.¹²

¹² The witness was employed as a CNA for the majority of her 16-year tenure. The month preceding the hearing, she became a restorative aide.

When asked whether they direct CNAs to resident call lights, there was charge nurse testimony that they will often simply answer the call light themselves rather than direct a CNA to the resident. Otherwise, as the CNAs are assigned to their residents by the management team, it appears that when determining who should perform a given task, the charge nurses' base that decision on who is already assigned to the resident's room, an assignment out of their control.

Likewise, when questioned about their involvement in directing CNAs in the event of fire alarm or emergency evacuation, a charge nurse testified that the CNAs already know what to do but admitted she could instruct them during the event. However, the CNA with the 16-year tenure testified that these events have only happened twice during her employment. Further, it appears that any instructions during these events would be pursuant to the Employer's established procedures again negating any evidence of independent judgment.

In regard to accountability, a charge nurse testified that if a CNA does not perform his/her duties, she is held accountable but she did not expound or otherwise describe how she is held accountable. The Employer presented the disciplinary records of two charge nurses who were purportedly held accountable for the actions of a CNA. One of the disciplinary action records shows that a charge nurse was disciplined because she instructed a CNA to work outside her scope and later falsified documentation. I find that this disciplinary action does not demonstrate accountability as, in this instance, the charge nurse actually instructed the CNA to perform an improper task. Therefore, in essence, the charge nurse was being held accountable for her own actions.

The other disciplinary action submitted by the Employer shows that on a single occasion in 2010, a charge nurse received an initial written warning because the assigned CNA did not provide care to a patient for an entire morning, and the charge nurse failed to check on the

patient and make sure that the CNA had taken care of the patient. This appears to charge the charge nurse with a failure of her own responsibilities as well as the CNA's actions. In any event, this single instance of accountability, without more, is not indicative of supervisory status. *Franklin Home Health Agency*, 337 NLRB at 829. There is no other record evidence of accountability, including evidence that charge nurses are regularly evaluated based on the performance of the CNAs. In *Golden Crest Healthcare Center*, 348 NLRB 727, 730-731 (2006), the Board failed to find accountability on much stronger facts. There, the charge nurses had authority to direct CNAs in their job performance and correct CNAs when they were not providing adequate care. Although job evaluation forms for the charge nurses showed ratings on this factor, there was no evidence that positive or negative consequences flowed as a result. Accordingly, the Board found insufficient evidence of accountability, and concluded that charge nurses were not supervisors. *Id.*

Finally, as detailed above, there is insufficient evidence to demonstrate that the charge nurses can take corrective action; their authority is limited to oral counselings and reporting misconduct. This is confirmed by the testimony of a charge nurse who stated that her ability to take corrective action is limited to calling the DON, calling 911 or asking a CNA to leave the building in egregious situations; she otherwise has no authority to discipline CNAs. In this same regard, the charge nurses testified that if they encounter a performance issue on their shift, they call their Unit Manager, per their Unit Manager's instruction, or the management team member on-call.

For the reasons set forth above, I find the Employer has failed to meet its burden to establish that the charge nurses discipline and responsibly direct within the meaning of Section 2(11) of the Act.¹³

CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit, UNIT A (Professional Unit), appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

¹³ The Employer argues that a majority of the time, the charge nurses are the most senior nursing personnel on duty, although admittedly the DON or ADON are on-call at all times. This factor does not establish supervisory status, as the Board has held that being the highest ranking individual at the facility is not a primary but rather a secondary indicum of supervisory status. It is settled that secondary indicia, standing alone, cannot confer supervisory authority. *Loyalhanna Care Center*, 352 NLRB 863, 864-865 (2008), *aff'd*, 355 NLRB 581 (2010). As the Employer has failed to establish any primary indicia of supervisory status, this argument is unpersuasive.

All full-time and regular part-time registered nurses employed at the Employer's facility in Georgetown, South Carolina, excluding all other employees, housekeepers, laundry employees, certified nursing assistants, restorative nursing assistants, schedulers, unit secretaries, maintenance employees, dietary workers, medical records employees, social services employees, activities employees, central supply employees, drivers, licensed therapists, therapist assistants, rehab technicians, business office employees including accounts payable employees and accounts receivable employees, the Director of Nursing, the Assistant Director of Nursing, unit managers, MDS coordinators, office clerical employees, and guards and supervisors as defined in the National Labor Relations Act.

6. The following employees of the Employer constitute a unit, UNIT B (Nonprofessional Unit), appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time licensed practical nurses employed at the Employer's facility in Georgetown, South Carolina, excluding all other employees, housekeepers, laundry employees, certified nursing assistants, restorative nursing assistants, schedulers, unit secretaries, maintenance employees, dietary workers, medical records employees, social services employees, activities employees, central supply employees, drivers, licensed therapists, therapist assistants, rehab technicians, business office employees including accounts payable employees and accounts receivable employees, the Director of Nursing, the Assistant Director of Nursing, unit managers, MDS coordinators, office clerical employees, and guards and supervisors as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot *Sonotone* election among the employees in the two units found appropriate above. The employees in Unit A and Unit B will vote on whether or not they wish to be represented for purposes of collective bargaining by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union. The employees in Unit A will also vote on whether or not they wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining.

The date, time, and place of the election will be specified in the Notice of Election that the Subregional Office in Winston-Salem, North Carolina, will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the units who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, **February 11, 2015**, the Employer must submit to the Subregional Office in Winston-Salem, North Carolina, separate election eligibility lists, containing the full names and addresses of all the eligible voters in Unit A and Unit B. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). These lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). Upon receipt of the lists, I will make them available to all parties to the election.

To be timely filed, the lists must be received in the Winston-Salem Subregional Office located at Republic Square, Suite 200, 4035 University Parkway, Winston-Salem, North Carolina, 27106-3325. No extension of time to file the lists will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted by facsimile transmission at (336) 631-5210. Because the lists will be made available to all parties to the election, please furnish a total of two copies, unless the lists are submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Subregional Office located at Republic Square, 4035 University Parkway, Winston-Salem, North Carolina, 27106-3325. To file the eligibility lists electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington D.C. 20570-0001. This request must be received by the Board in Washington by **February 18, 2015**. The request may be filed electronically through the Agency's website, www.nlr.gov,¹⁴ but may not be filed by facsimile.

Dated at Winston-Salem, North Carolina, on this 4th day of February 2015.



Claude T. Harrell Jr., Regional Director
Region 10, Subregion 11
National Labor Relations Board
4035 University Parkway, Suite 200
Winston-Salem, NC 27106

¹⁴ To file the request for review electronically, go to www.nlr.gov, select File Case Documents, enter the NLRB Case Number, and follow the detailed instructions.